

DT



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,566	01/19/2001	Earl M. Rector JR.	UV-31CONT.	2141
1473	7590	11/26/2004	EXAMINER	
FISH & NEAVE LLP 1251 AVENUE OF THE AMERICAS 50TH FLOOR NEW YORK, NY 10020-1105			KOSTAK, VICTOR R	
			ART UNIT	PAPER NUMBER
			2614	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

DT

<b>Office Action Summary</b>	<b>Application No.</b> 09/766,566	<b>Applicant(s)</b> RECTOR ET AL.	
	<b>Examiner</b> Victor R. Kostak	<b>Art Unit</b> 2614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 42-50 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 42-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 2614

1. Applicant's arguments filed on 07/13/04 have been fully considered but they are not persuasive. The rejection based on Thomas in view of Kessel, or Kessel in view of Thomas accordingly stands, reasons countering applicant's arguments therefor presented as follows.

After describing the systems of Thomas and Kessel, applicant argues that the examiner improperly presumes that construction program guides must involve data being placed in cells of a grid. Applicant asserts that although initial construction is a necessity, Thomas is silent on initial construction, and adds that there must be more than one way (besides applicant's) to construct program guides.

Thomas does however describe fitting text into grids, specifically involving editing and correcting (col. 10 lines 20-22 and 30-33; col. 6 lines 29-35; col. 7 lines 21-27), though not necessarily during initial construction, as discussed in the last Office action. Thomas also discloses automatic editing (col. 7 lines 50-53), also pointed out in the last Office action. Thomas therefore explicitly recognizes that program guide construction involves fitting text into a grid, and using a computer with display (e.g. col. 2 lines 48-50). One of ordinary skill in the art is not restricted from considering these procedures strictly to subsequent editing, but in any stage of program guide generation and modification. Kessel was therefor referred to regarding initial data entry.

To dismiss the application of Kessel as combinable with Thomas, applicant argues that the benefit of Kessel is only in what Kessel explicitly states as the benefit (namely bringing new products to market faster; designing plants that require less capital investment and cost less to operate; reducing manufacturing costs in existing facilities: col. 1 lines 50-63).

The examiner counters this narrow inference by pointing out that Kessel expressly and clearly discloses the benefit of including automatic error checking to assist the computer display operator during data entry (col. 3 lines 50-63). (In the last Office action the examiner erroneously referred to col. 1 lines 50-63 in presenting this disclosure of Kessel, applicant addressing this text instead. The examiner accordingly regrets the inaccuracy. Nonetheless, the full disclosure of Kessel was provided to applicant for complete perusal).

Kessel discusses this real-time error checking irrespective of the application of plant design or anything else (in fact in preceding text starting in line 32). Its benefit stands on its own, and the reasonable interpretation of this part of Kessel's disclosure by one of ordinary skill in the art is in recognizing its application to any similar data entry operation involving a user and a display computer. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kessel does in fact discuss in general terms user entry of desired data assisted by automatic error checking, again noting col. 3 lines 50-63. Thomas discloses error

Art Unit: 2614

checking in editing his program guides, including text fitting. With this, initial guide generation must be done. The combination of Thomas and Kessel therefore is legitimate.

The rejection accordingly stands and is repeated below from the last Office action (with the correct citation regarding the automatic error checking).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 and 42-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (of record) in view of Kessel et al., or alternatively, Kessel in view of Thomas.

Reviewing Thomas, his data management system (noting particularly Figs. 1, 4, 5 and 8) involves constructing, organizing and modifying program guide databases for eventual distribution, and includes correcting, validating and editing program guides prior to distribution (e.g. col. 3 lines 60-64). Television computers (i.e. computers which process television data) are used to initially generate and modify EPG data (e.g. col. 2 lines 48-50; computer hardware and software very typically implemented in database management) and the EPG data is arranged in channel and time slot data grid format (col. 1 lines 33-37). Manual entry and correction subsystem 20 involves personnel at the headend obtaining and applying content data in the EPG construction stage, and configuration of the guide provided by element 96 (which involves target fitting of the data in the grid arrangement).

One embodiment of EPG assembly regarding initial text collection (from a text database) involves configuration subsystem 50 being consulted by the ADC (automated data collection) for selecting appropriate content text, the text fit processor for determining field sizes (i.e. grid cell/tile dimensions; col. 10 lines 20-22 and 30-33), which suggests that the grids are checked prior to completion and during assembly. Further discussion of checking during construction is given in col. 6 lines 29-35 which describes updating (reconstruction) of EPGs for conflicts database 90 during manual editing and correcting which can be done in real time. Thomas further points out that a manual entry and corrections subsystem is needed to make changes, deletions and corrections to the data contained in the database, such as in assuring a “text fit” (col. 7 lines 21-27), and automatic editing can also be applied (col. 7 lines 50-53).

However, as applicant argues, initial data entry into the grid is not disclosed by Thomas, and the error checking he does disclose is done subsequent to any initial program guide generation. Nonetheless, there is unquestionably some point in time when the grid is originally constructed under the direction of an operator.

The system of Kessel involves initially entering data into fields on a video display screen, wherein efficiency is improved by applying an automatic error checking function during the entry process (col. 3 lines 50-63), and specifically on an input data – by input data – basis for each input field (col. 14 lines 41-45), which further implies real-time adjustment. Kessel initially describes his system as being applied to process engineering but the substance of his disclosure is addressed to general applications.

In view of the benefit of automatic error checking during initial data entry into fields on a screen as explicitly disclosed by Kessel, it would have been obvious to one of ordinary skill in

Art Unit: 2614

the art to ensure as much as possible that data fields on a video screen are properly presented in any system that involves initially entering data by an operator to generate screens of data fields entered manually in piecemeal fashion, such as the system as that of Thomas which involves continuous data entry updating. By automatically checking the initial entry of data thereto by an operator, the initial data entry into fields (in this case program guide data grid cells) results in minimal error, and is thereby carried out in an efficient manner (so specified by Kessel). In Thomas, an initial database of entries covers all necessary program schedule data and the data entry would involve respective television system computers handled by respective operators, thereby meeting claims 1, 10 and 42.

Alternatively, it would have been obvious to one of ordinary skill in the art to modify Thomas by Kessel by recognizing the explicitly disclosed benefit of Kessel regarding initial data entry. Prior to subsequent guide assembly and eventual schedule guide transmission, it would have been obvious to first enter the data as accurately as possible with the assistance of automatic checking for errors during entry, thereby resulting in fewer erroneously constructed schedule guides that need to be subsequently checked, thereby meeting claims 1, 10 and 42

As for claims 2, 11 and 43, manual data entry requires a user accessing an interface with the computer, which therefore means that an interface is inherent in the system of Thomas. Kessel specifies using station hardware involving data entry (col. 4 lines 22-43).

Regarding claims 3, 12 and 44, program data errors (i.e. text from the database) would be checked during EPG construction (i.e. data entry into the fields as disclosed by Kessel).

As for claims 4, 13 and 45, "text fits" and ensuring that titles do not exceed the target fields (col. 8 lines 22-25) are addressed. Such would have been obvious to check during data

Art Unit: 2614

entry as taught by Kessel, for the general purpose of assembling a sufficiently presentable grid in an efficient manner.

As for claims 5, 14 and 46, Thomas points out that checking to validate any additional number of potential problems with the data would have been apparent to those skilled in the art, and gives examples (col. 8 lines 35-41). In view of this, it would have been obvious to account for errors such as listing duplicate data, which is a possibility due to plural data sources or operators accessing the same databases. (Thomas also discusses minimizing duplicate data in the database in order to keep the database limited: col. 6 line 12+).

As for claims 7, 16 and 48, Fig. 1 of Thomas depicts the main facility. Kessel too would have a main (if not single and therefore main) facility.

Considering claims 8, 17 and 49, the ultimately corrected EPGs are sent to distributors (noting the rightmost system components in Fig. 1 of Thomas).

As for claims 9, 18 and 50, the individual workstations (not depicted) send the EPG data to database 90 (Fig. 3).

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period



Art Unit: 2614

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is 703 305-4374. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703 305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this final action should be mailed to:**

Box AF  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

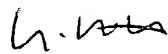
**Or faxed to:**

**(703) 872-9306 (for Technology Center 2600 only)**

Art Unit: 2614

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 308-HELP.



Victor R. Kostak  
Primary Examiner  
Art Unit 2614

VRK